

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

LIEU MINH QUANG,

Plaintiff and Respondent,

v.

NEIL TRAN,

Defendant and Appellant.

D041992

(Super. Ct. No. 800859)

APPEAL from an order of the Superior Court of San Diego County, William R. Nevitt, Jr., Judge. Affirmed.

Lieu Minh Quang sued Neil Tran and his publication (the "Nang Moi Newspaper"), alleging that Tran maliciously published false statements concerning Quang's purported sexual activities with female employees. Tran moved to strike the lawsuit under the anti-SLAPP statute, but the court found the statute was inapplicable and denied the motion. (Code Civ. Proc., § 425.16 (§ 425.16).) Tran appeals. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Tran owns a Vietnamese language publication titled Nang Moi Magazine or Nang Moi Newspaper. Quang's first amended complaint alleges that this publication is a "weekly advertising circular" and that for several months the publication contained articles falsely alleging that Quang, "in his capacity as law office manager, has hired female employees, induced them to engage in sexual relations with him, rendered them pregnant and then shipped them out of state to hide the pregnancy." Quang alleged that in publishing these statements Tran acted with malice and with the intent to injure Quang. Quang attached to his complaint the Vietnamese versions and English translations of two of the allegedly false articles published by Tran. The first article, dated July 20, 2002, reads:

"Some law offices in San Diego make a special practice of placing ads for the hiring of young, pretty ladies. The 'Quang Linh' then always stamps these ladies, getting them PREGNANT. These ladies then are given money to leave the state and stay hidden away. These gentlemen are very 'QUANG LIEU' and are very daring in actions, but later went out to 'MINH QUANG' the situation, claiming to have been wrongfully blamed. Nang Moi Magazine is verifying this hot news and will report later to our readers and fellow countrymen."
(Boldface omitted.)

The second article, dated July 27, 2002, reads:

"Some law offices in San Diego often place ads for the hiring of young, pretty secretaries. One law office has a Mr. 'Quan' who always lures those secretaries into eating 'raw hot dogs'. After a sample, some of the ladies actually get poisoned by the side effects and their bellies swell up, more and more each day. Quan then moves them to other states to take care of the sickness and in order to avoid tangles with the law and their families. The law office gentleman acts like a mandarin (Quan Lieu) having these ladies eat 'raw hot dogs', which results in a swollen belly, and then goes

outside to 'Minh Quang' things, claiming all is false and he is not guilty and does not have bastard children." (Boldface omitted.)

Tran moved to strike the complaint under the anti-SLAPP law. (§ 425.16.) Tran argued that section 425.16 applied to the complaint because the allegations arose from allegedly defamatory statements made in a "public forum" that concerned an "issue of public interest" or a "public issue." (§ 425.16, subd. (e)(3), (e)(4).) Tran claimed the articles concerned an issue of public interest because they "address[] the issue of inadequate legal representation and improper conduct by law firms and 'law office managers' serving the Vietnamese community"

In support of this argument, Tran submitted portions of Quang's deposition transcript in which Quang answered "yes" to Tran's counsel's questions asking whether it is "a matter of public significance whether a lawyer [serving the Vietnamese community] represents clients properly"; whether it is "important for the Vietnamese community [to] have good lawyers representing them"; and whether "misconduct by law firms . . . is an issue of public significance for the Vietnamese community" Tran also relied on Quang's deposition testimony in which Quang agreed that he is "well-known in the Vietnamese community" because his picture appears in his law firm's advertisement.

Tran also submitted his own declaration stating that he is "the owner of Nang Moi Newspaper, . . . a weekly publication which contains advertising, news articles and articles of interest to the Vietnamese community. It is published in the Vietnamese language and there are a number of other similar newspapers which circulate in the Vietnamese community publishing in Vietnamese." Tran further declared that Quang "is

a well-known person, and indeed a public figure in the Vietnamese community. He has advertised and his photograph appears in advertisements in Vietnamese newspapers circulating throughout the Vietnamese community, in which advertisements he solicits clients for law firms. He is very prominent in the Vietnamese community and has thrust himself into the forefront of the provision of legal services to the Vietnamese community, as a law office manager, working with lawyers." Tran also included a copy of a Vietnamese language advertisement, advertising the law offices of "Brent Barnes & Catherine Tong" and including a picture of Quang with one of the attorneys. Tran also attached English translations of three documents (Exhibits E, F, and G), which Tran says discuss and/or reflect an ongoing dispute between himself and the "old guard" in the Vietnamese community.

In opposing the anti-SLAPP motion, Quang argued the alleged defamatory statements do not concern a "public issue" or an "issue of public interest" as those terms are used in section 425.16, and therefore the anti-SLAPP statute was inapplicable. In support, Quang submitted numerous declarations from individuals who read the articles in the original Vietnamese and stated they understood them to be asserting that Quang engaged in improper sexual conduct with secretaries in the law firm. Quang also submitted his own declaration stating he is a manager of a law firm, and denying that he engaged in any form of sexual misconduct alleged in the articles. Quang stated that Tran's articles first appeared in the Nang Moi publication shortly after his employer decided to limit its advertising in this publication. Quang further stated that "In response to Mr. Tran's allegation that I am involved in some plot or movement to hurt him, to put

him out of business, or to silence the voice of his magazine, I state without reservation that I have never participated in any such movement. [¶] I do not belong to any organizations, political, civic, social or otherwise. I have never given a speech. I have never published an article or an essay or even a poem. I do not attend meetings or rallies or any other gatherings of people involved in local affairs. On only rare occasions in the past have I attended parties or charitable events such as concerts, and have on occasion presented a check for a donation from my employer. I do not provide support of any sort to persons who may have interests inimical to those of Mr. Tran."

With respect to Exhibits E, F, and G that had been submitted by Tran, Quang stated: "I do not know the dates of publication, nor do I know in which publication they appeared. I had nothing to do with those articles. Since I do not have the Vietnamese version, I am unable to express any opinion as to whether the Exhibits are representative of the original or not."¹

After considering the parties' submissions, the superior court sustained Quang's objections to Exhibits E, F, and G, finding that "[t]hese purported English translations from writings in the Vietnamese language are not accompanied by the Vietnamese writings nor are they certified under oath by a qualified interpreter. (Cal. Rules of Court, rule 311(e).)" The court additionally found that even assuming these exhibits were admissible, the alleged false statements do not concern a public issue or an issue of public

¹ Quang also produced evidence to demonstrate a prima facie case in support of the causes of action alleged in the complaint, but because we do not reach this issue, we omit discussion of this evidence.

interest, and therefore the anti-SLAPP statute was inapplicable. The court thus expressly declined to reach the question whether Quang had met his burden to show a probability of prevailing on his causes of action.

Tran appeals.

DISCUSSION

I. Summary of Applicable Anti-SLAPP Law

Under section 425.16, a cause of action is subject to a special motion to strike if the claim arises "from any act . . . in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue" (§ 425.16, subd. (b)(1).) The statute identifies four categories of activity that are "in furtherance of a person's right of petition or free speech. . . ." (§ 425.16, subd. (e).) The first two categories pertain to statements or writings made before, or in connection with, a "legislative, executive, or judicial body, or any other official proceeding" (§ 425.16, subd. (e)(1), (2).) The third category is "any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest." (§ 425.16, subd. (e)(3).) The fourth category is "any other conduct in furtherance of the exercise of the constitutional right of petition or . . . free speech in connection with a public issue or an issue of public interest." (§ 425.16, subd. (e)(4).)

When the defendant's alleged acts fall under the first two categories, the defendant is not required to independently demonstrate that the matter is a "public issue" within the statute's meaning. (*Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th

1106, 1113 (*Briggs*).) But if the defendant's alleged acts fall under the third or fourth categories, the defendant must show the statements and/or conduct concern a "public issue" or an "issue of public interest." (*Ibid.*)

In ruling on an anti-SLAPP motion, a court must first determine whether the defendant has met its burden to show the challenged cause of action is one arising from activity protected under the anti-SLAPP statute. (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67; *Navellier v. Sletten* (2002) 29 Cal.4th 82, 88-89.) If the defendant does not meet this threshold burden, the court must deny the motion. (*Ibid.*) Whether section 425.16 applies to a particular complaint generally presents a legal question subject to a de novo review standard on appeal. (*Kashian v. Harriman* (2002) 98 Cal.App.4th 892, 906.)

II. Analysis

Tran concedes that his alleged false statements were not made in connection with a "legislative, executive, or judicial body, or any other official proceeding" (§ 425.16, subd. (e)(1), (2)), and therefore he had the burden to show the statements concern a "public issue" or an "issue of public interest." (§ 425.16, subd. (e)(3) & (4).) In attempting to meet this burden, Tran claims his alleged false statements concerned a public issue because they pertained to the "quality of representation of lawyers who seek to represent the Vietnamese community. . . ."

Although the quality of attorneys serving a particular community can certainly be a matter of substantial public interest, Tran's alleged false statements do not concern this issue. Instead, the statements involve the alleged sexual activities of an individual who

works as an office manager for a law firm. The fact that this individual is employed by a law firm that serves the Vietnamese community is insufficient to transform the matter into an issue of public interest. The courts have repeatedly rejected attempts to create a public interest issue under the anti-SLAPP statute merely because the moving party can identify an important public policy that relates to, or underlies, the subject matter of the particular statements or conduct at issue. (See *Weinberg v. Feisel* (2003) 110 Cal.App.4th 1122, 1132-1136; *Commonwealth Energy Corp. v. Investor Data Exchange, Inc.* (2003) 110 Cal.App.4th 26, 34; *Consumer Justice Center v. Trimedica International, Inc.* (2003) 107 Cal.App.4th 595, 601; *Rivero v. American Federation of State, County and Municipal Employees, AFL-CIO* (2003) 105 Cal.App.4th 913, 924.) Because the public interest element was intended to be a limitation on the applicability of the anti-SLAPP statute, the "assertion of a broad and amorphous public interest is not sufficient" to meet the requirements of the statute. (*Weinberg v. Feisel, supra*, 110 Cal.App.4th at p. 1132; *Commonwealth Energy Corp., supra*, 110 Cal.App.4th at p. 34.) Instead, to meet its threshold burden, the moving party must show a meaningful link between the challenged first amendment activity and the asserted public interest. (*Ibid.*)

In this case, Tran did not produce any evidence showing a connection between Quang's alleged sexual activities and the quality of attorney representation in the Vietnamese community. In seeking to establish the requisite link, Tran relied on Exhibits E, F, and G. However, as found by the trial court, the documents were inadmissible because there was no foundation to show the proffered English versions were accurate translations of the original Vietnamese articles. Additionally, there was no foundation to

show the dates or authors of the articles. Moreover, even if Exhibits E, F, and G were admissible, these articles do not reflect that Quang's alleged sexual activities related to a broader issue of public significance. Tran asserts in his declaration that the articles concern a controversy in the Vietnamese community between himself and an "old guard" group called the "Freedom Fighters Alliance Committee." However, Tran did not produce any evidence showing Quang was a member of this "old guard" group, or that Quang's alleged sexual misconduct had any relationship to this controversy. Quang specifically denied having anything to do with the articles or that he has ever participated in a movement or group in opposition to Tran, and the court had a substantial basis to find these assertions credible. Further, these exhibits did not show that Quang's alleged improper activities had any effect on the legal representation provided by his employers to its clients.

Tran alternatively attempts to establish a public issue by showing that Quang "was a 'person in the public eye.'" In support, Tran states that Quang "'thrust himself into the public eye' of the Vietnamese community" because his picture appeared in Vietnamese-language advertisements for the law firm for which he was an office manager. Tran also emphasizes that Quang acknowledged in his deposition that he may be "well-known" in the Vietnamese community because of these advertisements.

The fact that a person may be "known" to a group of people does not convert any false statement about this person into a public issue. Instead, there must be a connection between that person's "public" status, the alleged defamation, and the public interest.

(See *Weinberg v. Feisel*, *supra*, 110 Cal.App.4th at p. 1132; *Sipple v. Foundation for Nat.*

Progress (1999) 71 Cal.App.4th 226.) In *Sipple*, a nationally known political consultant sued a magazine publisher, based on allegedly false statements concerning the consultant's physical and verbal abuse against two of his former wives. (*Sipple, supra*, at p. 229.) The evidence on the anti-SLAPP motion showed the plaintiff's media strategy while working for prominent politicians focused on publicizing the politicians' stands against domestic violence, and that the plaintiff had "directed extremely successful campaigns based on the problem of violence toward women." (*Id.* at p. 239.) On this record, the court found the articles concerned "public issues" within the meaning of the anti-SLAPP statute because they concerned "the details of the plaintiff's career and [the plaintiff's] ability to capitalize on domestic violence issues in his advertising campaigns for politicians known around the word, while allegedly committing violence against his former wives" (*Id.* at p. 239; see also *Annette F. v. Sharon S.* (2004) 119 Cal.App.4th 1146 [alleged false statement related directly to claimed public interest issue].)

In this case, there is no similar connection between the reason Quang is well known in the community (for having his picture in a commercial advertisement) and the subject matter of the alleged defamation. The fact that many people may have read or discussed Tran's articles, or that sexual misconduct allegations are often the focus of media attention, does not establish the requisite connection. "'[P]ublic interest' does not equate with mere curiosity." (*Weinberg v. Feisel, supra*, 110 Cal.App.4th at p. 1132; see *Time, Inc. v. Firestone* (1976) 424 U.S. 448, 454-455.) Further, the anti-SLAPP statute does not become applicable merely because Tran published his allegations of

wrongdoing. A person cannot create an issue of public interest merely by writing about a subject matter and "cannot turn otherwise private information into a matter of public interest simply by communicating it to a large number of people." (*Weinberg v. Feisel*, *supra*, 110 Cal.App.4th at p. 1133.) If publication were sufficient, "anything . . . published would almost automatically become a matter of public interest." (*Rivero v. American Federation of State, County, and Municipal Employees, AFL-CIO*, *supra*, 105 Cal.App.4th at p. 926.)

Tran's reliance on *Macias v. Hartwell* (1997) 55 Cal.App.4th 669 and *Damon v. Ocean Hills Journalism Club* (2000) 85 Cal.App.4th 468, is misplaced. In *Macias*, the alleged defamation appeared in a political flyer distributed to 10,000 union members concerning the plaintiff's qualifications to serve as union president. (*Macias v. Hartwell*, *supra*, 55 Cal.App.4th at pp. 673-674.) The court found that this subject matter concerned a public issue because it involved the leadership of a "large, powerful organization [that] may impact the lives of many individuals." (*Id.* at p. 674.) In *Damon*, this court similarly held statements pertaining directly to the governance of a 3,000 member homeowner association involved issues of public interest because they concerned inherently political questions of vital importance to each individual and to the community as a whole. (*Damon, supra*, 85 Cal.App.4th at p. 479.) There is no showing that the alleged false statements about Quang's sexual affairs similarly concern the leadership and direction of the affected community. Thus, *Macias* and *Damon* are not helpful to Tran in this case.

We conclude Tran did not meet his burden to show Quang's complaint implicates constitutionally protected activity in connection with a public issue or an issue of public interest. We thus do not reach the question whether the alleged false statements were made in a "public forum" (§ 425.16, subd. (e)(3)), or whether Quang showed a probability of prevailing on the merits (§ 425.16, subd. (b)).

The court properly denied Tran's anti-SLAPP motion. We deny Quang's request for attorney fees under section 425.16, subdivision (c). The record does not support that Tran's motion was frivolous or was solely intended to cause unnecessary delay.

DISPOSITION

Order affirmed. Tran to pay Quang's costs incurred on appeal.

HALLER, J.

WE CONCUR:

McCONNELL, P. J.

McDONALD, J.